

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RESEARCH PLASTICS, INC.,
a foreign Corporation,

Plaintiff,

v

Case No. 98-73544
Honorable Avern Cohn
Honorable Paul J. Komives

FEDERAL PACKAGING CORP.,
an Ohio Corporation,

Defendants.

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MOTION IN LIMINE TO EXCLUDE EVIDENCE OF TOLERANCE
AND BRIEF IN SUPPORT

Plaintiff, Research Plastic Corporation (“Research”), asks the Court to exclude evidence that Defendant Federal Packaging Corporation (“Federal”) is likely to try and introduce at trial with regard to the tolerances on the rib in its caulking tube.

The reasons supporting this motion are set forth below.

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MEMORANDUM IN SUPPORT OF MOTION

This lawsuit concerns Research's patents on caulking tubes and an air escape rib. The exemplary claim 10 from the U.S. Patent 5,628,433, includes a limitation that the rib occupies less than five percent of the overall cross-sectional area of the tube. Federal's tube includes dimensions of the width and height of the rib and the diameter of the tube. Based upon those intended dimensions, the rib does fall within the claimed five percent cross-sectional area.

As is typically the case in manufacturing, each of these dimensions is also provided with a tolerance. It appears Federal will argue that, hypothetically, if its ribs height and width were at the high end of the tolerance range, and if its tubes diameter were at the low end, that hypothetical rib may slightly exceed the five percent requirement.

Federal has no evidence that the ribs of any actual tubes that it sold exceed the five percent requirement. Moreover, in a deposition on January 13, 2006, Federal's President, Norm Pfeifer, admitted he had no idea whether any of the tubes Federal had manufactured would have come within this alignment of the three tolerances (see attached pps. 17-19).

There is no caselaw that would support allowing Federal to make this argument. Since in the end, there can be no proof that any one tube exceeded the five percent requirement, the introduction of any evidence with regard to this concept would be irrelevant, confusing to the Judge and potentially prejudicial. Certainly, the prejudice would outweigh any possible value. (FRC 403).

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For this reason, Research asks that the Court exclude Federal from introducing any such evidence at trial.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.

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Dated: March 7, 2006

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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